

(i) Market Shares

50. We begin our analysis by calculating market shares and Herfindahl-Hirschman Index (HHI) estimates for long distance voice and data enterprise services for each of AT&T's and Verizon's franchise areas for which we have sufficient data.¹⁴¹ In general, the market share calculations indicate a moderate level of concentration in most franchise areas for many relevant services for *large* enterprise customers with significant operations in AT&T's region and Verizon's region.¹⁴² As noted above, our analysis of particular geographic areas is limited by the data submitted by AT&T and Verizon. We report figures for state-wide data for AT&T's regions, while we report figures for Verizon's Bell Atlantic franchise areas and GTE territories. We note that Verizon submitted combined Bell Atlantic/GTE data for the two states (Pennsylvania and Virginia) in which it has both a Bell Atlantic franchise area and a GTE territory.

51. AT&T's median market share for large enterprise customers for long distance voice services is [REDACTED] percent for the states within its BOC region.¹⁴³ For data services provided within AT&T's BOC regions, AT&T's median market share for T-1 data services is [REDACTED] percent,¹⁴⁴ its median market share for T-3 data services is [REDACTED] percent,¹⁴⁵ and its median market share for ATM data services is [REDACTED] percent.¹⁴⁶

52. For Verizon, we report figures separately for its BOC franchise areas and for its former GTE franchise areas. Verizon's median market share for large enterprise customers for long distance voice services is [REDACTED] percent for its former Bell Atlantic region¹⁴⁷ and [REDACTED] percent for its former GTE territory.¹⁴⁸ Verizon's median market share for T-1 data services is [REDACTED]

¹⁴¹ The HHI is calculated as the sum of the squares of the market shares of each firm participating in a relevant market. The HHI can range from nearly zero in the case of an atomistic market to 10,000 in the case of a pure monopoly. Because the HHI is based on the squares of the market shares of the participants, it gives proportionately greater weight to carriers with larger market shares. See *DOJ/FTC Guidelines* at § 1.5. We only report the median market share for services with sufficient data in at least five geographic markets. In Appendix C, we report market share information for all relevant services and all relevant geographic markets in which there are sufficient data.

¹⁴² Our analysis of AT&T's and Verizon's market positions are based upon data AT&T and Verizon obtained from third parties. See AT&T Apr. 23, 2007 *Ex Parte* Letter, Exh. 4 (state-wide and MSA data); Verizon Apr. 19, 2007 *Ex Parte* Letter, Attach. 4.5 (franchise area data); Verizon Apr. 20, 2007 *Ex Parte* Letter, Exh. 4.5 (MSA-level data). The business segments reported in the third party data do not generally conform to the categorization schemes used by AT&T or Verizon, and thus, may overstate or understate the actual level of concentration in each relevant geographic market. See *supra* para. 26. In general, we limit our analysis to geographic areas with at least 30 observations. We exclude the "UNSPECIFIED" category from our analysis because it represents incomplete responses.

¹⁴³ Appendix C, Table 1. AT&T's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁴⁴ *Id.* AT&T's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁴⁵ *Id.* AT&T's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁴⁶ *Id.* AT&T's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED]. We do not report figures for Frame Relay data services because of insufficient data for these services. See Appendix C, Table 1.

¹⁴⁷ Appendix C, Table 2. Bell Atlantic's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁴⁸ *Id.* GTE's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

percent for its former Bell Atlantic region¹⁴⁹ and [REDACTED] percent for its former GTE territory.¹⁵⁰ Verizon's median market share for T-3 data services is [REDACTED] percent within its former Bell Atlantic region.¹⁵¹ Verizon's median market share for Frame Relay data services is [REDACTED] percent within its former Bell Atlantic region¹⁵² and [REDACTED] percent within its former GTE territory.¹⁵³

53. Similarly, the market share calculations indicate a moderate level of concentration in most franchise areas for many relevant services for small/medium business customers with significant operations in AT&T's and Verizon's respective regions. Within its region, AT&T's median statewide market share for long distance voice services provided to small/medium enterprise customers is [REDACTED] percent,¹⁵⁴ its median statewide market share for T-1 data services is [REDACTED] percent,¹⁵⁵ its median statewide market share for T-3 data services is [REDACTED] percent,¹⁵⁶ and its median statewide market share for ATM data services is [REDACTED] percent.¹⁵⁷

54. Verizon's median state franchise area market share for long distance voice services provided to small/medium enterprise customers is [REDACTED] percent within its former Bell Atlantic region¹⁵⁸ and [REDACTED] percent within its former GTE territory.¹⁵⁹ Verizon's median state franchise area market share for T-1 data services is [REDACTED] percent within its former Bell Atlantic region¹⁶⁰

¹⁴⁹ *Id.* Bell Atlantic's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁵⁰ *Id.* GTE's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁵¹ *Id.* Bell Atlantic's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED]. We do not report figures for T-3 services in GTE's franchise areas or ATM data services in Bell Atlantic's franchise areas or GTE's territories because we have insufficient data for fewer than [REDACTED] of these franchise areas. See Appendix C, Table 2.

¹⁵² *Id.* Bell Atlantic's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁵³ *Id.* GTE's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁵⁴ Appendix C, Table 3. AT&T's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁵⁵ *Id.* AT&T's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁵⁶ *Id.* AT&T's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁵⁷ *Id.* AT&T's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED]. See Appendix C, Table 3 for individual state results for Frame Relay services within AT&T's franchise areas with more than 30 observations.

¹⁵⁸ Appendix C, Table 4. Bell Atlantic's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁵⁹ *Id.* GTE's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁶⁰ *Id.* Bell Atlantic's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

and [REDACTED] percent within its former GTE territory.¹⁶¹ Within the former Bell Atlantic region, Verizon's median state franchise area market share for T-3 data services is [REDACTED] percent,¹⁶² and its median state franchise area market share for ATM data services is [REDACTED] percent within its former Bell Atlantic region.¹⁶³ Verizon's median state franchise area market share for Frame Relay data services is [REDACTED] percent within its former Bell Atlantic region¹⁶⁴ and [REDACTED] percent within its former GTE territory.¹⁶⁵

55. These market shares and accompanying estimates of level of concentration suggest that AT&T and Verizon each operate in moderately concentrated in-region markets for the long distance voice services and the data services discussed above. These data further suggest that a significant number of competitors operate within each of these markets.

56. Finally, we find that AT&T and Verizon separately lack classical market power with respect to interstate, long distance services provided to large enterprise customers with national, multi-location operations both inside and outside of AT&T's and Verizon's respective franchise areas. First, AT&T's and Verizon's estimated market shares for these services do not raise concerns with respect to classical market power. For long distance services provided to the largest enterprise customers, AT&T's market share is [REDACTED] percent measured in revenues and their market share is [REDACTED] percent measured in minutes.¹⁶⁶ The corresponding figures for Verizon are [REDACTED] percent and [REDACTED] percent.¹⁶⁷ Second, consistent with the Commission's conclusions in the *SBC/AT&T Order* and the *Verizon/MCI Order*, we find that these large, multi-location enterprise customers tend to be sophisticated purchasers of communications services that make their decisions about communications services by using either communications consultants or employing in-house communications experts. This is significant not only because it demonstrates that these users are aware of the multitude of choices available to them, but also because it shows that these users are likely to make informed choices based on expert advice about service offerings and prices. Thus, so long as competitive choices remain in this

¹⁶¹ *Id.* GTE's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁶² *Id.* Bell Atlantic's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED]. Refer to Appendix C, Table 4 for individual franchise area results for T-3 services (GTE franchise area). We do not report figures in the text because fewer than [REDACTED] geographic areas have sufficient data for our analysis.

¹⁶³ *Id.* Bell Atlantic's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED]. We do not report figures for ATM services in the GTE franchise area in the text because fewer than [REDACTED] geographic areas have sufficient data for our analysis.

¹⁶⁴ *Id.* Bell Atlantic's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁶⁵ *Id.* GTE's market share ranges from [REDACTED] with an accompanying HHI of [REDACTED] to [REDACTED] with an accompanying HHI of [REDACTED].

¹⁶⁶ Appendix C, Table 9.

¹⁶⁷ *Id.* These estimates are based upon services provided to the largest purchasers of telecommunications services (i.e., enterprise customers spending at least \$1,000,000 annually). AT&T May 1, 2007 *Ex Parte* Letter, Exh. 5a. Verizon estimates it has a [REDACTED] percent market share for long distance voice services provided to all business customers, but it is unable to distinguish national, multi-locational enterprise customers from other types of enterprise customers. Letter from Joseph Jackson, Associate Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112 at 1, Exh. 5.1 (filed Apr. 12, 2007) (Verizon Apr. 12, 2007 *Ex Parte* Letter).

market, these large multi-location enterprise customers should seek out best-priced alternatives, and neither AT&T nor Verizon should be able to raise and maintain prices above competitive levels.¹⁶⁸

(ii) Other Factors

57. Although the record in this proceeding does not include estimates of either the price elasticities of demand or the elasticities of supply for interstate, long distance services within AT&T's and Verizon's regions, the Commission's findings in the recent *BOC Merger Orders* help to inform our analysis here. Specifically, consistent with the Commission's conclusions in the recent *BOC Merger Orders*, we find that enterprise customers tend to be sophisticated purchasers of communications services, whether they are located solely within AT&T's or Verizon's respective regions, or have locations both inside and outside these regions. Because enterprise customers tend to make their decisions about communications services by employing communications consultants or in-house communications experts, we expect them to be aware of the multitude of choices available to them.¹⁶⁹

(c) Wholesale Interexchange Competition

58. The Commission previously has identified wholesale domestic, interstate, interexchange (*i.e.*, long distance) services as a separate product market, although it has not always found it necessary to conduct a separate analysis of that product market.¹⁷⁰ Consistent with our definition of the relevant geographic markets for retail enterprise and retail mass market services,¹⁷¹ we conclude that the relevant geographic market for wholesale, interstate, long distance services is the customer's location.¹⁷² We then aggregate locations where customers face similar competitive choices. Since all the major providers of wholesale long distance services have nationwide networks,¹⁷³ we can aggregate customers of wholesale long distance service who are located throughout the United States. Moreover, wholesale long distance customers generally need to connect to the wholesale long distance provider at multiple locations throughout the United States. Consequently, we find it appropriate to aggregate customer locations and evaluate wholesale long distance services at the national level.¹⁷⁴

59. Consistent with prior Commission findings, we find that the market for wholesale, interstate, long distance services is competitive, and that significant spare capacity exists in this market.¹⁷⁵ Specifically, AT&T's market share for wholesale long distance voice services is approximately [REDACTED] percent, and its market share for wholesale data services is [REDACTED] percent. The

¹⁶⁸ See *SBC/AT&T Order*, 20 FCC Rcd at 18332-33, para. 76; *Verizon/MCI Order*, 20 FCC Rcd at 18474, para. 76.

¹⁶⁹ See *SBC/AT&T Order*, 20 FCC Rcd at 18332-33, para. 75; *Verizon/MCI Order*, 20 FCC Rcd at 18474, para. 75.

¹⁷⁰ See, *e.g.*, *SBC/AT&T Order*, 20 FCC Rcd at 18369, para. 147; *Verizon/MCI Order*, 20 FCC Rcd at 18510, para. 146; *WorldCom/MCI Order*, 13 FCC Rcd at 18041-42, para. 28.

¹⁷¹ See *supra* parts III.A.1.a(iv)(b) (Retail Enterprise Competition), III.A.1.a(iv)(a) (Mass Market Competition).

¹⁷² We note that individual customers of wholesale, interstate, long distance services are, like larger, multi-location enterprise customers, likely to require access to service at multiple geographic locations, often throughout the United States or a region thereof. See *supra* part III.A.1.a(iv)(b) (Retail Enterprise Competition).

¹⁷³ See, *e.g.*, *SBC/AT&T Order*, 20 FCC Rcd at 18369, para. 148; *Verizon/MCI Order*, 20 FCC Rcd at 18510, para. 147.

¹⁷⁴ We note that this approach is consistent with our definition of the relevant geographic markets for larger multi-location enterprise customers with a nationwide presence. See *supra* part III.A.1.a(iv)(b) (Retail Enterprise Competition).

¹⁷⁵ See *SBC/AT&T Order*, 20 FCC Rcd at 18369-18371, para. 149-151; *Verizon/MCI Order*, 20 FCC Rcd at 18510-18512, para. 148-151.

corresponding figures for Verizon's wholesale services are [REDACTED] percent and [REDACTED] percent.¹⁷⁶ We find that, in addition to AT&T and Verizon, Qwest, and others have a significant presence in this market.¹⁷⁷ Moreover, as the Commission recently determined, there is significant spare capacity in this market, and this industry segment faces increasing pressure from the migration of minutes to packet-switched voice services, Internet-based applications, and other technological substitutes.¹⁷⁸ There is no information in this record that would cause us to alter these findings. The evidence of continued competition from a variety of wholesale interexchange service providers convinces us that the BOCs lack individual classical market power with respect to these wholesale markets.¹⁷⁹ Based on the foregoing, we find that the BOCs are not dominant in the wholesale segment of the domestic, interstate, long distance services market.

b. International Telecommunications Services

60. We conclude that AT&T, Verizon, and Qwest lack individual classical market power in the markets for in-region, international telecommunications services.¹⁸⁰ We examine two wholesale markets for these services – facilities-based international message telecommunications services (IMTS)¹⁸¹ and international private line services¹⁸² – and two retail IMTS markets – mass market IMTS and international enterprise services.

¹⁷⁶ Appendix D, Table 1 and 2.

¹⁷⁷ *Id.* See *SBC/AT&T Order*, 20 FCC Rcd at 18370, para. 150; *Verizon/MCI Order*, 20 FCC Rcd at 18511, para. 149; see also *AT&T Reclassification Order*, 11 FCC Rcd at 3308, paras. 70, 72; *WorldCom/MCI Order*, 13 FCC Rcd at 18052-56, paras. 43-50 & 18066-67, para. 70.

¹⁷⁸ See *SBC/AT&T Order*, 20 FCC Rcd at 18370, para. 150; *Verizon/MCI Order*, 20 FCC Rcd at 18511, para. 149.

¹⁷⁹ Appendix D, Tables 1 and 2.

¹⁸⁰ We do not consider whether AT&T, Verizon, or Qwest should be classified as dominant based on an affiliation with a foreign carrier that has market power on the foreign end of a U.S. route. Qwest and AT&T have certified that none of their international affiliates are classified as dominant pursuant to section 63.10 of the Commission rules, 47 C.F.R. § 63.10. See AT&T Apr. 24, 2007 *Ex Parte* Letter at 1-2; Letter from Timothy M. Boucher, Qwest Corporate Counsel, to Marlene H. Dortch, Secretary, FCC, WC Docket. No. 05-333, at 1 (filed Jan. 22, 2007) (Qwest Jan. 22, 2007 *Ex Parte* Letter). Although Verizon has been classified as dominant on three international routes (U.S.-Dominican Republic, U.S.-Gibraltar, and U.S.-Venezuela) based on its affiliations with foreign carriers, Verizon has terminated these affiliations. Specifically, Verizon Communications sold its Verizon Dominicana affiliate to America Movil on December 1, 2006, and was reclassified as nondominant on the U.S.-Dominican Republic route on June 20, 2007. See *International Authorizations Granted*, Report No. TEL-01159, Public Notice, 22 FCC Rcd 11176, 11177 (2007). Verizon sold its interest in Gibtelecom Limited to Slovene Telekom on April 24, 2007, and filed for reclassification as nondominant on the U.S.-Gibraltar route. See Verizon International FCC Licensees Application to Modify Regulatory Classification on the U.S.-Gibraltar Route, File No. ITC-MOD-20070514-00322 (filed May 14, 2007). Verizon tendered its entire interest in, and the Bolivarian Republic of Venezuela assumed operational control of, Compañía Anónima Nacional Teléfonos de Venezuela (CANTV) as of May 21, 2007, and Verizon filed for reclassification as nondominant on the U.S.-Venezuela route. See Verizon International FCC Licensees Application to Modify Regulatory Classification from Dominant to Non-Dominant on the U.S.-Venezuela Route, File No. ITC-MOD-20070524-00323 (filed May 24, 2007).

¹⁸¹ Facilities-based IMTS refers to services provided using international transmission facilities owned in whole or in part by the carrier providing the service. See 2005 *International Telecommunications Data* at 3 (Strategic Analysis and Negotiations Div., International Bur. Apr. 2007) (2005 Section 43.61 Report).

¹⁸² International private line service is the provision by a U.S. carrier of dedicated connectivity between points in the United States and foreign destinations. See *Verizon/MCI Order*, 20 FCC Rcd at 18519, para. 168. Private line facilities are offered to the public in sizes ranging from 64-Kbps circuits (DS0) up to very high speed trunks equivalent to 1,890 64-Kbps circuits (STM-1), or higher. *Id.*

(i) Wholesale Markets

61. We find that AT&T, Verizon, and Qwest do not possess individual, classical market power in the markets for facilities-based IMTS or international private line services. We base these findings on AT&T's, Verizon's, and Qwest's traffic shares for all international routes combined, their respective market shares on a route-specific basis, and prior Commission findings regarding characteristics of this market. Qwest is not a facilities-based provider of IMTS, and thus has no ability to exercise classical market power in this market.¹⁸³ In addition, AT&T's and Verizon's respective market shares and the characteristics of this market support a finding that AT&T and Verizon also each lack individual classical market power in this market. As of 2005, the most recent year for which data are available, there were 45 facilities-based IMTS carriers. In 2005, AT&T and Verizon respectively accounted for [REDACTED] percent and [REDACTED] percent of the total number of all IMTS facilities-based minutes.¹⁸⁴ While AT&T and Verizon account for a significant proportion of minutes on some specific routes,¹⁸⁵ these are generally "thin" routes. Moreover, the Commission has found the IMTS market to be competitive. Specifically, in the *Verizon/MCI Order*, the Commission found that: (1) there were not significant barriers to entry on most international routes; (2) substantial international transport capacity exists in all regions; and (3) there were at least 10 reporting facilities-based IMTS carriers on 218 of the 247 international routes; and (4) there is a growing "spot market" for international termination services whereby carriers with excess capacity to various foreign destinations can auction foreign termination services to any U.S. carrier seeking such services.¹⁸⁶ The Commission further found that, with improvements in quality of service and customer access, international VoIP services from the United States to foreign destinations could become a substitute for facilities-based IMTS services.¹⁸⁷ There is no evidence in this record that would cause us to reconsider these findings. Finally, with respect to international private line service, we find that AT&T's, Verizon's, and Qwest's traffic shares, as well as the number of providers operating in this market,¹⁸⁸ indicate that AT&T, Verizon, and Qwest individually could not exercise classical market power in this market. Therefore, we find it unlikely that AT&T,

¹⁸³ 2005 Section 43.61 Report at Table D.

¹⁸⁴ *Id.*

¹⁸⁵ AT&T's market share is less than [REDACTED] percent on all but [REDACTED] of the 247 international routes. The exceptions are: [REDACTED]. Verizon's market share is less than [REDACTED] percent on all but [REDACTED] of 247 international routes, with the following exceptions: [REDACTED]. As noted, the routes where AT&T and Verizon's market share exceed [REDACTED] percent generally are "thin" routes, which would be unlikely to support a significant number of additional providers. See Verizon May 8, 2007 *Ex Parte* Letter at 1 & Attach.; Letter from Frank S. Simone, Executive Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112 at 1 & Attach. (filed May 4, 2007) (AT&T May 4, 2007 *Ex Parte* Letter); 2005 Section 43.61 Report, at Table A.

¹⁸⁶ *Verizon/MCI Order*, 20 FCC Rcd at 18518, para. 166; *AT&T/BellSouth Order*, 22 FCC Rcd at 5744-45, para. 167.

¹⁸⁷ *Verizon/MCI Order*, 20 FCC Rcd at 18518, para. 167; see also *AT&T/BellSouth Order*, 22 FCC Rcd at 5745, para. 168.

¹⁸⁸ In 2005, there were 46 carriers that competed in the U.S. markets for international private line services. The shares of total U.S. international private lines were only [REDACTED] percent for AT&T, [REDACTED] percent for Qwest, and [REDACTED] percent for Verizon. See Verizon May 8, 2007 *Ex Parte* Letter at 1 & Attach.; AT&T May 4, 2007 *Ex Parte* Letter at 1 & Attach.; 2005 Section 43.61 Report, at Table A. Although AT&T, Verizon, and Qwest had substantial market shares on certain routes, many of these routes are thin routes. Moreover, the existence of substantial U.S. international transport capacity, from which private lines are derived, makes it unlikely that providers of private line service with large market shares on any route can exercise market power. In 2005, private lines comprised approximately 4 percent of all lit U.S. submarine cable capacity, which is the primary transmission medium for non-thin route private lines. See 2005 *Circuit Status Report*, Tables 5 and 7 (Jan. 19, 2007).

Verizon, or Qwest individually could exercise market power in the wholesale markets for facilities-based IMTS or international private line services.

(ii) **End-User Markets**

62. We also find that AT&T, Verizon, and Qwest do not possess individual, classical market power in the provision of international telecommunications services provided to mass market customers and to retail enterprise customers. The market for mass market, international telecommunications services resembles in many respects the market for domestic long distance services in that these customers generally have the same presubscribed interexchange carrier or wireless carrier when making both domestic and international long distance calls.¹⁸⁹ The Commission has found that presubscription to a particular IMTS provider is generally less important for mass market consumers because consumers placing a large number of international calls often use "dial-around" services or prepaid calling cards to reduce the prices they pay for those calls.¹⁹⁰ Thus, AT&T's, Verizon's, and Qwest's market shares for in-region, interstate, long distance services likely provide an upper bound for their respective market shares in the IMTS mass market. Given our conclusion that AT&T, Verizon, and Qwest lack individual, classical market power with respect to in-region interstate, long distance services for the mass market,¹⁹¹ we thus conclude that AT&T, Verizon, and Qwest also lack individual, classical market power with respect to mass market IMTS.

63. We also conclude that AT&T, Verizon, and Qwest do not possess individual, classical market power with respect to IMTS provided to enterprise customers. Like purchasers of domestic enterprise services,¹⁹² international enterprise customers are sophisticated purchasers of telecommunications services that are likely to make informed choices based on expert advice about service offerings and prices. In addition, the provision of international telecommunications services to enterprise customers depends in large part on the ability to obtain critical inputs, such as international transport capacity and operating agreements with carriers on the foreign end, as well as the technical ability to provide the specific services demanded by larger business customers. Given the Commission's prior findings that there are no structural barriers to entry for international telecommunications services provided to enterprise customers, we therefore find that AT&T, Verizon, and Qwest lack individual classical market power with respect to international enterprise services.¹⁹³

c. **Control of Bottleneck Access Facilities**

64. We next consider whether the BOCs' provision of in-region, interLATA telecommunications services directly or through an affiliate that is not compliant with section 272 would permit them to raise the price of those services by raising their rivals' costs through their control over bottleneck facilities.¹⁹⁴ The BOCs assert that they face significant competition within their respective

¹⁸⁹ See *Verizon/MCI Order*, 20 FCC Rcd at 18520, para. 171.

¹⁹⁰ *Id.*

¹⁹¹ See *supra* part III.A.1.a(iv)(a); Appendix B; *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5224-25, para. 32 & Appendix B.

¹⁹² See *supra* part III.A.1.a(iv)(b).

¹⁹³ See, e.g., *Verizon/MCI Order*, 20 FCC Rcd at 18518, para. 166. Most of the 45 facilities-based IMTS carriers and all of the 46 international private line carriers listed above provide service to enterprise customers.

¹⁹⁴ See *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5231, para. 47; *LEC Classification Order*, 12 FCC Rcd at 15812-13, paras. 98, 100.

regions from wireline, wireless, and other intermodal competitors,¹⁹⁵ and that their respective retail access line bases have declined significantly.¹⁹⁶ We find, however, that the BOCs have failed to present persuasive evidence that they no longer possess exclusionary market power within their regions as a result of their control over ubiquitous telephone exchange service and exchange access networks. We therefore assume, for the purposes of this proceeding, that each of the BOCs individually continues to possess exclusionary market power within its respective regions by reason of its control over these bottleneck access facilities.¹⁹⁷

2. Dominant Carrier Regulation

65. In the *Section 272 Sunset and Independent Incumbent LEC Further NPRM*, the Commission sought comment on whether it should apply dominant carrier regulation to any in-region, interstate, long distance services that the BOCs and the independent incumbent LECs provide either directly or through affiliates that are neither section 272 separate affiliates nor rule 64.1903 separate affiliates.¹⁹⁸ We find here that application of dominant carrier regulation to AT&T's, Verizon's, and Qwest's in-region, interstate, long distance services is unwarranted. First, as our market analysis indicates, AT&T, Qwest, and Verizon do not possess classical market power in the provision of in-region, interstate, long distance services, which is the type of market power that dominant carrier regulation is designed to address.¹⁹⁹ Second, as the Commission recognized in the *LEC Classification Order*, dominant carrier regulation is not designed to guard against potential abuse of exclusionary market power.²⁰⁰ Instead, as discussed below, existing safeguards, combined with the additional safeguards set forth below, adequately address the ability of AT&T, Qwest, and Verizon to raise their long distance rivals' costs through their control of bottleneck access facilities.²⁰¹

¹⁹⁵ See, e.g., Legacy BellSouth FNPRM Comments at 7-9; Legacy SBC FNPRM Comments at 16-20; Verizon FNPRM Comments at 11-18; Verizon Feb. 15, 2007 *Ex Parte* Letter at 2-15.

¹⁹⁶ See, e.g., Legacy BellSouth FNRPM Reply at 5-8; Verizon Feb. 15, 2007 *Ex Parte* Letter at 15-25.

¹⁹⁷ See, e.g., *LEC Classification Order*, 12 FCC Rcd at 15835, para. 134; Legacy AT&T NPRM Comments at 12-14 (arguing that BOCs continue to retain and exercise market power through their control of bottleneck facilities); Legacy AT&T FNPRM Comments at 8-21 (same); AdHoc FNPRM Reply at 3-5 (arguing that incumbent LECs continue to dominate local exchange and exchange access markets).

¹⁹⁸ *Section 272 Sunset and Independent Incumbent LEC Further NPRM*, 18 FCC Rcd at 10932-36, paras. 29-43.

¹⁹⁹ AT&T, Qwest, and Verizon also provide in-region, interstate, intraLATA, long distance services, which are interexchange telecommunications services that cross state lines but remain within a single LATA. See *Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 98-157, CCB/CPD File No. 98-63, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, 14245, para. 48 (1999) (*Pricing Flexibility Order*) (explaining that "[i]nterstate intraLATA toll calls are calls that leave an immediate local calling area and cross state lines but remain within a single LATA, such as some calls from Chicago, Illinois, to Gary, Indiana"), *aff'd sub nom. WorldCom, Inc. v. FCC*, 238 F.3d 449 (D.C. Cir. 2001). We find there is no practical distinction between these services and the BOCs' in-region, interstate, interLATA, long distance services.

²⁰⁰ See *LEC Classification Order*, 12 FCC Rcd at 15762-63, para. 6 (concluding that "regulating BOC in-region interLATA affiliates as dominant carriers generally would not help to prevent improper allocation of costs, discrimination by the BOCs against rivals of their interLATA affiliates, or price squeezes by the BOCs or the BOC interLATA affiliates").

²⁰¹ See *LEC Classification Order*, 12 FCC Rcd at 15835, para. 134.

a. In-Region, Interstate, Long Distance Services
(i) Classical Market Power

66. As our market analysis makes clear, we find that AT&T, Qwest, and Verizon generally lack classical market power in long distance markets.²⁰² Consequently, we find it unlikely that these carriers will be able unilaterally to raise and maintain the prices of in-region, interstate, long distance services above competitive levels, or otherwise impose and maintain unjust, unreasonable, or unreasonably discriminatory terms and conditions in relation to these services.²⁰³ When the Commission made similar findings concerning classical market power in the *LEC Classification Order*, it concluded that the burdens of dominant carrier regulation outweigh its benefits.²⁰⁴ Nothing in the record leads us to question that conclusion. Therefore, consistent with that precedent, we do not apply dominant carrier regulation to the BOCs' provision of in-region, interstate, long distance services either directly or through an affiliate that is neither a section 272 separate affiliate nor a rule 64.1903 separate affiliate.

67. Despite this general finding, we remain concerned, as the Commission was in the *Qwest Section 272 Sunset Forbearance Order*,²⁰⁵ that BOC residential customers who make relatively few interstate long distance calls may have fewer competitive choices among in-region, interstate long distance providers. Such customers also may not subscribe to wireless or broadband Internet access service, and therefore may be unable to avoid the impact of a price increase by engaging in usage substitution.²⁰⁶ Our concern regarding such customers is twofold. First, customers who make very few interstate, long distance calls, or whose usage patterns do not justify subscription to unlimited calling plans, should be able to choose among reasonable and affordable alternatives to such plans. Second, customers who make relatively few interstate long distance calls should receive sufficient information regarding their monthly long distance usage to make informed choices whether calling plans with large numbers of monthly minutes and unlimited calling plans suit their needs.

68. As we discuss more fully below,²⁰⁷ AT&T, Qwest, and Verizon have made commitments to address these concerns. Specifically, AT&T and Verizon have committed, for three years, to offer rate plans tailored to low-volume customers.²⁰⁸ In addition, both AT&T and Verizon have committed, for three years, to make available monthly long distance usage information for customers who subscribe to

²⁰² See *supra* part III.A.1.a(iv); see also Verizon Feb. 15, 2007 *Ex Parte* Letter at 2-21 (arguing there is extensive competition for mass market voice services from cable, wireless, over-the-top VoIP, traditional competitive LECs, and broadband over power line (BPL) providers).

²⁰³ Our market analysis also makes clear that competition may be expected to constrain AT&T, Qwest, and Verizon in both the mass market and in the market for enterprise customers. See *supra* at parts III.A.1.a(iv)(a) (AT&T and Verizon mass market analysis) & III.A.1.a(iv)(b) (AT&T and Verizon enterprise market analysis); para. 21 (determining that it is appropriate to rely on the Commission's finding that Qwest lacks classical market power with regard to in-region, interstate, long distance services).

²⁰⁴ *LEC Classification Order*, 12 FCC Rcd at 15804, para. 85, 15806-08, paras. 88-90, & 15812-33, paras. 98-130; see *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5233, para. 51.

²⁰⁵ *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5233, para. 52, & paras. 71-72; see *AT&T Reclassification Order*, 11 FCC Rcd at 3313-14, paras. 81-82.

²⁰⁶ See *supra* market analysis of usage substitution part III.A.1.a(iv)(a)(iii).

²⁰⁷ See *infra* part III.A.4.b.

²⁰⁸ See Letter from Frank Simone, Executive Director-Federal Regulatory, AT&T, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 02-112, 06-120, at 1-2 (filed Aug. 15, 2007) (AT&T Aug. 15, 2007 *Ex Parte*); Letter from Susanne A. Guyer, Senior Vice President, Federal Regulatory Affairs, Verizon, to Marlene Dortch, Secretary, FCC, WC Docket No. 02-112, at 1-2 (filed Aug. 21, 2007) (Verizon Aug. 21, 2007 *Ex Parte*).

certain single-rate telecommunications service plans.²⁰⁹ As discussed below, we find it appropriate to adopt these rate plans and usage information requirements as enforceable obligations. We note that, under the *Qwest Section 272 Sunset Forbearance Order*, Qwest made similar commitments that were adopted as a condition of the Commission's forbearance.²¹⁰

(ii) Exclusionary Market Power

69. As explained above, we assume for purposes of this proceeding that AT&T, Qwest, and Verizon continue to possess exclusionary market power within their respective regions as a result of their control over ubiquitous telephone exchange service and exchange access networks. We conclude, however, that imposing dominant carrier regulation on the BOCs' and their independent incumbent LEC affiliates' provision of in-region, long distance services is not a reasonable and cost-effective method of constraining exercise of this market power.

70. The Commission previously concluded that dominant carrier regulation is not designed to prevent the exercise of exclusionary market power.²¹¹ Nothing in the record of this proceeding persuades us to change this conclusion. AT&T's, Qwest's, and Verizon's exclusionary market power raises the possibility that they could leverage market power in the telephone exchange service or exchange access markets to impede competition in the in-region, interstate, long distance services market, through discrimination against competitors, improper cost shifting, or price squeezes.²¹² We find, however, that alternative safeguards, as described below,²¹³ address these concerns far more directly than would dominant carrier regulation of AT&T's, Qwest's, and Verizon's in-region, long distance services.

71. We recognize, of course, that dominant carrier regulation of AT&T's, Qwest's, and Verizon's in-region, long distance services could provide some increased level of protection against the exercise of exclusionary market power, beyond that provided by these alternative safeguards. Such regulation would impose significant costs, however. These costs include the administrative costs imposed on both the carriers and this Commission that are associated with price regulation, tariff-filing requirements, and reporting requirements.²¹⁴ Application of dominant carrier regulation to these services

²⁰⁹ See AT&T Aug. 15, 2007 *Ex Parte* at 2; Verizon Aug. 21, 2007 *Ex Parte* at 2.

²¹⁰ *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5243-44, paras. 71-72.

²¹¹ *LEC Classification Order*, 12 FCC Rcd at 15804, para. 85 ("dominant carrier regulations are generally designed to prevent a carrier from raising prices by restricting its output rather than to prevent a carrier from raising its prices by raising its rivals' costs"); *id.* at 15818, para. 106 & 15832, para. 129 (the Commission also concluded that dominant carrier regulation would not prevent improper cost shifting, and would not be necessary or appropriate to constrain the BOC and its affiliate from attempting to execute a predatory price squeeze).

²¹² See, e.g., *LEC Classification Order*, 12 FCC Rcd at 15815-19, paras. 103-08, 15821-26, paras. 111-19, 15829-33, paras. 125-30, & 15847-15857, paras. 158-75 (describing the incentives, ability, and means for an incumbent LEC to improperly allocate costs, engage in price and non-price discrimination, and engage in a price squeeze); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, WC Docket No. 96-149, Notice of Proposed Rulemaking, 11 FCC Rcd 18877, 18944, para. 139 (1996) (*Non-Accounting Safeguards NPRM*) (BOCs could use market power in the provision of local exchange and exchange access services to discriminate against interLATA affiliates' competitors to gain an advantage for their interLATA affiliates).

²¹³ See *infra* part III.A.4.

²¹⁴ See, e.g., Legacy BellSouth FNPRM Comments at 22-28 (claiming that dominant carrier regulation imposes significant costs and burdens with no countervailing benefits to consumers); Qwest FNPRM Comments at 21-23 (same); *LEC Classification Order*, 12 FCC Rcd at 15806-08, paras. 88-90.

also would restrict AT&T's, Qwest's, and Verizon's ability to respond to competitors' pricing and product initiatives, and would give competitors advance notice of AT&T's, Qwest's, and Verizon's own pricing plans and new products.²¹⁵ By impeding the BOCs' ability to compete, these requirements could dampen competition.²¹⁶ Given the relative inefficiency of dominant carrier regulation in constraining the exercise of exclusionary market power and the significant costs associated with such regulation, we find that alternative safeguards we discuss and adopt below are more cost-effective than, and preferable to, imposing dominant carrier regulation.²¹⁷

(iii) Conclusion

72. Based on the preceding analysis, we find the BOCs to be nondominant in the provision of in-region, interstate, long distance services that they provide either directly or through affiliates that are not section 272 separate affiliates as long as they comply with certain targeted safeguards set forth below as well as continuing statutory and regulatory obligations. We also find the BOCs' independent incumbent LEC affiliates to be nondominant in the provision of in-region, long distance services either directly or through affiliates that are not rule 64.1903 separate affiliates. We discuss the effects of these findings in part III.A.2.c, below.

b. International Telecommunications Services

73. As discussed in part III.A.1.b, we conclude that AT&T, Verizon, and Qwest do not have the ability separately to exercise classical market power in the markets for in-region, international telecommunications services. Therefore, consistent with the Commission's conclusions in the *LEC Classification* and the *Qwest Section 272 Sunset Forbearance Orders*,²¹⁸ we find no practical distinctions between AT&T's, Verizon's, and Qwest's incentives and ability to use any in-region market power in their provision of international and interstate, long distance services. Accordingly, to the extent the BOCs are deemed nondominant in the provision of any in-region, international telecommunications service provided through a section 272 separate affiliate, we find them to be nondominant in the provision of that service in the event they provide it directly or through an affiliate that is not a section 272 separate affiliate. Moreover, to the extent the BOCs' independent incumbent LEC affiliates are deemed nondominant in the provision of any in-region, international telecommunications service provided through a rule 64.1903 separate affiliate, we find them to be nondominant in the provision of that service in the event they provide it directly or through an affiliate that is not a rule 64.1903 separate affiliate.

²¹⁵ See, e.g., SBC FNPRM Comments at 6 (arguing that dominant carrier regulation impedes competition because the dominant carrier must provide advance notice of new service offerings and price changes to competitors); *LEC Classification Order*, 12 FCC Rcd at 15806-08, paras. 88-90.

²¹⁶ See, e.g., Verizon FNRPM Comments at 28 (arguing the advance notice requirement under dominant competition would stifle competition); Verizon Feb. 15, 2007 *Ex Parte* Letter at 29 (arguing that dominant carrier regulation would "hinder deployment of advanced broadband networks and services"); *LEC Classification Order*, 12 FCC Rcd at 15805-07, paras. 87-88.

²¹⁷ See, e.g., Legacy BellSouth FNPRM Comments at 22-28; Legacy SBC FNPRM Comments at 4; Verizon FNPRM Comments at 28-29; see also Verizon Feb. 15, 2007 *Ex Parte* Letter at 29 (stating that "re-regulating" Verizon and other carriers as dominant will reduce efficiency, increase costs, and hinder deployment of broadband services); *LEC Classification Order*, 12 FCC Rcd at 15806-08, paras. 88-90. We reject the arguments of certain commenters that dominant carrier regulation should be maintained, since the commenters implicitly assume that structural safeguards are necessary. See, e.g., Texas AG FNPRM Comments at 1; Legacy AT&T FNPRM Comments at 47-53; NJ Ratepayer FNPRM Reply at 2; Sprint FNPRM Reply at 4. Rather, as we discuss below, we find that the alternative regulatory framework we adopt in this Order is more appropriate than the regulatory safeguards that previously had applied to the BOCs and their independent incumbent LEC affiliates.

²¹⁸ *LEC Classification Order*, 12 FCC Rcd at 15838, para. 138; see also *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5247, para. 81.

These findings are subject to the BOCs' and their independent incumbent LEC affiliates' compliance with the targeted safeguards set forth in part III.A.4.b of this Order. We discuss the effects of these findings in part III.A.2.c, below.

74. As a general matter, the BOCs and their independent incumbent LEC affiliates are not subject to dominant carrier regulation for their in-region provision of international telecommunications services to the same extent that they are not subject to those requirements for their in-region provision of domestic, interstate, long distance services. AT&T, Qwest, and Verizon remain subject, however, to our dominant carrier rules that apply specifically to U.S. carriers that provide international telecommunications services.²¹⁹ For example, to the extent that Verizon remains affiliated, or AT&T, Verizon, or Qwest become affiliated, within the meaning of section 63.09 of our rules, with a foreign carrier that has the ability to discriminate against these carriers' rivals through control of bottleneck services or facilities in a foreign destination market,²²⁰ the BOCs and their independent incumbent LEC affiliates will continue to be presumptively classified as dominant under section 63.10 of our rules and subject to the safeguards in that rule, which apply to carriers that we classify as dominant based on a foreign carrier affiliation.²²¹ Thus, our framework for addressing issues raised by the provision of international telecommunications services, either by the BOCs or their affiliates, will remain in effect.

c. Effect of Nondominance Findings

75. In this part, we discuss the specific regulatory implications of our decisions to classify the BOCs and their independent incumbent LEC affiliates as nondominant in the provision of in-region, interstate and international, long distance services, whether they provide these services directly or through affiliates that are neither section 272 nor rule 64.1903 separate affiliates. We emphasize that the BOCs and their affiliates are still subject to any rule that applies to carriers classified as nondominant in the provision of in-region, interstate and international, long distance services.²²²

76. *Price Cap, Rate of Return, and Tariffing.* In view of our nondominance determinations in this Order, we find that, subject to the conditions set forth below, AT&T, Verizon, and Qwest are no longer subject to the requirements in section 203 of the Act and certain of our price cap, rate of return, and tariffing rules with respect to in-region, interstate and international, long distance services. Specifically: (1) AT&T, Verizon, and Qwest are not required to, and are in fact barred from, filing tariffs for in-region, interstate and international, long distance services pursuant to section 203 of the Act and sections 61.31-61.38 and 61.43 of our rules;²²³ (2) AT&T, Verizon, and Qwest are not required to

²¹⁹ 47 C.F.R. § 63.10 (regulatory classification of U.S. international carriers); see *LEC Classification Order*, 12 FCC Rcd at 15838-39, para. 139 (preserving rules designed to address the incentives and ability of a foreign carrier to discriminate against the rivals of its U.S. affiliate).

²²⁰ See *supra* note 180.

²²¹ See 47 C.F.R. § 63.10.

²²² *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5235, para. 55.

²²³ See 47 U.S.C. § 203; 47 C.F.R. §§ 61.31-61.38 (tariffing requirements for dominant carriers); see also 47 C.F.R. § 61.43 (requiring annual price cap filings); *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730 (1996) (*Detariffing Order*); *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934*, CC Docket No. 96-61, Order on Reconsideration, 12 FCC 15014 (1997) (*Detariffing Reconsideration Order*); *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934*, CC Docket No. 96-61, Second Order on Reconsideration and Erratum, 14 FCC Rcd 6004 (1999) (*Detariffing Second Reconsideration Order*).

establish an "interexchange basket" pursuant to section 61.42(d)(4) of our rules,²²⁴ to the extent that section 61.42(d)(4) would require the establishment of an interexchange basket for the services covered by this Order when those services are provided directly or through an affiliate that is neither a section 272 nor a rule 64.1903 separate affiliate; and (3) AT&T, Verizon, and Qwest need not comply with section 61.28 of our rules for the provision of in-region, international telecommunications services to the extent that, and only to the extent that, the BOCs or their affiliates that are neither section 272 nor rule 64.1903 separate affiliates would be treated as dominant carriers under section 61.28 for no other reason than their provision of in-region, international telecommunications services.²²⁵ To the extent that the BOCs or their affiliates that are neither section 272 nor rule 64.1903 separate affiliates otherwise would be treated as dominant carriers under section 61.28, this Order has no effect on that treatment.²²⁶

77. Discontinuance and Streamlined Transfer of Control. In view of our nondominance determinations in this Order, we find that, subject to the conditions set forth below, AT&T, Qwest, and Verizon are not subject to certain of our discontinuance and streamlined transfer of control rules in connection with their in-region, interstate and international, long distance services. Specifically, AT&T, Qwest, and Verizon are not subject to sections 63.03, 63.19, 63.21, 63.23, and 63.60-63.90 of our rules for their provision of in-region, interstate and international, long distance services to the extent that, and only to the extent that, the BOCs or their affiliates would be treated as dominant carriers under these rules for no reason other than their provision of those services directly or through an affiliate that is neither a section 272 nor a rule 64.1903 separate affiliate.²²⁷ To the extent that the BOCs or their affiliates otherwise would be treated as dominant carriers under these rules, that treatment shall continue.²²⁸

78. Contract Filing and Reporting. In light of our nondominance determinations in this Order, we find that, subject to the conditions set forth below, AT&T, Qwest, and Verizon are not subject to section 43.51 of our rules with respect to their provision of in-region, interstate or international, long distance services directly or through an affiliate that is neither a section 272 nor a rule 64.1903 separate affiliate.²²⁹ Specifically, the BOCs and their affiliates are not subject to section 43.51 of our rules for their provision of in-region, interstate or international, long distance services directly or through an affiliate that is neither a section 272 nor a rule 64.1903 separate affiliate to the extent that, and only to the extent that, the BOCs or their affiliates would be treated as dominant carriers under section 43.51 for no other reason than their provision of in-region, interstate or international, long distance services directly or through an affiliate that is neither a section 272 nor a rule 64.1903 separate affiliate. To the extent that the BOCs or their affiliates otherwise would be treated as dominant carriers under section 43.51, that treatment shall continue.

²²⁴ 47 C.F.R. § 61.42(d)(4) (interexchange basket for services that are not classified as access services).

²²⁵ 47 C.F.R. § 61.28 (tariffing requirements for dominant international carriers).

²²⁶ See *supra* paras. 60-63 (addressing in-region, international telecommunications services).

²²⁷ See 47 C.F.R. § 63.03 (procedures for domestic transfer of control applications); 47 C.F.R. § 63.19 (procedures for discontinuing international services); 47 C.F.R. § 63.21 (conditions that apply to international section 214 authorizations); 47 C.F.R. § 63.23 (conditions that apply to resale-based international common carriers); 47 C.F.R. §§ 63.60-90 (definitions, rules, and procedures that apply to the discontinuance, reduction, outage, and impairment of services).

²²⁸ Our finding with respect to section 63.03 extends only to those circumstances in which the BOCs seek to assign or transfer control of assets used solely for the purpose of providing in-region, interstate or international, long distance services or to transfer control of an affiliate that does not jointly own any assets with another entity that uses such assets to provide services that are subject to dominant carrier regulation.

²²⁹ 47 C.F.R. § 43.51 (filing of carrier contracts and concessions).

3. Structural Safeguards

a. Section 272 Safeguards

79. In this part, we conclude that the section 272 safeguards, other than those in section 272(e), impose significant costs. Because we find that other less costly safeguards adequately address the concerns raised by the BOCs' possession of exclusionary market power, we decline to impose on the BOCs the section 272 safeguards that have sunset.²³⁰

80. In the *Section 272 Sunset Notice*, the Commission invited comment on whether it should extend the section 272 structural separation and other requirements, or variations of these requirements, beyond the three-year period in order to protect against anticompetitive discrimination and improper cost shifting by the BOCs in the provision of in-region, interLATA telecommunications services.²³¹ The Commission also invited comment on what, if any, alternative safeguards it should apply to BOC provisioning of in-region, interLATA, telecommunications services in the event it decided not to extend that statutory period.²³²

81. As discussed above, the BOCs have failed to demonstrate that they lack exclusionary market power associated with their control of bottleneck facilities.²³³ Accordingly, we must assume, for purposes of this proceeding, that the BOCs possess exclusionary market power.²³⁴ In the *LEC Classification Order*, the Commission relied in part on the presence of section 272 safeguards as protection against the BOCs' possible exercise of exclusionary market power.²³⁵ We find, based on the current record, however, that the section 272 safeguards, other than those in section 272(e), are not necessary to protect against the exercise of any market power the BOCs possess given our ability to rely on less costly alternatives.²³⁶

82. We find that the section 272 safeguards impose a variety of significant costs, including administrative costs on both the BOCs and the Commission. For example, providing interstate, interLATA telecommunications services through a section 272 separate affiliate requires the BOCs, *inter alia*, to operate these services independently of their telephone exchange service and exchange access

²³⁰ For convenience, in this part, we use the term "section 272 safeguards" to refer exclusively to those section 272 safeguards that have sunset. This term excludes the safeguards in section 272(e).

²³¹ See *Section 272 Sunset Notice*, 17 FCC Rcd at 9920, para. 9.

²³² See *id.*

²³³ See *supra* part III.A.1.c.

²³⁴ See *id.*

²³⁵ See *LEC Classification Order*, 12 FCC Rcd at 15762-63, para. 6 (stating that, "[i]n light of the requirements established by, and pursuant to, sections 271 and 272, together with other existing Commission rules, we conclude that the BOCs will not be able to use, or leverage, their market power in the local exchange or exchange access markets to such an extent that their section 272 interLATA affiliates could profitably raise and sustain prices of in-region, interstate, domestic, interLATA services significantly above competitive levels by restricting the affiliate's own output").

²³⁶ See, e.g., Legacy BellSouth NPRM Comments at 18-19 (arguing that continuing safeguards will protect competition more efficiently and at a lesser expense than section 272 requirements); see also Qwest NPRM Comments at 13 (describing that costs of section 272 requirements stem from inefficiencies in maintaining separate networks and workforces); Legacy SBC NPRM Comments at 7 (claiming that as a result of the section 272 requirements, SBC must duplicate resources, which its competitors do not); Verizon NPRM Comments at 8 (stating that "continuing the 272 separate affiliate requirements will distort competition and discourage investment and innovation").

operations, and to maintain duplicate sets of officers, directors, and employees.²³⁷ These restrictions not only impose additional costs, but also prevent the BOCs from taking advantage of the economies of scope and scale associated with integrated operation that their competitors are able to realize.²³⁸ Moreover, structural separation between a BOC's local telephone and long distance operations are at odds with a market environment where the distinction between those local and long distance services has been blurred by the way those services are marketed and delivered to consumers.²³⁹ As a general matter, these restrictions and their associated costs make the BOCs less effective competitors in the market.

83. These restrictions also may prevent the BOCs and their affiliates from quickly responding to technological and marketplace developments. For example, although competitors may purchase a single piece of new technology and quickly deploy it, because of prohibitions against jointly owning facilities and sharing directors, officers, and employees,²⁴⁰ a BOC might be required to purchase two pieces of equipment and might suffer delays in bringing the technology to market because it must coordinate deployment with its long distance affiliate's officers and employees.²⁴¹ The joint ownership prohibition could also prevent a BOC from deploying the latest, most innovative technology, or cause delays in bringing services relying on that technology to market.²⁴² Additionally, the requirement that a

²³⁷ See 47 U.S.C. § 272(b); see generally *Accounting Safeguards Order*, 11 FCC Rcd 17539; *Non-Accounting Safeguards Order*, 11 FCC Rcd 21905; Qwest NPRM Comments at 13; Verizon NPRM Comments at 9-11.

²³⁸ See Legacy SBC NPRM Reply at 15-17 (arguing that competitors that can integrate their local and long distance operations are at an advantage, especially with respect to complex services to large business customers that want end-to-end services); see also USTA NPRM Comments at 7. The Commission has previously found that structural separation may sacrifice innovation, efficiency, and economies of scale and scope. See, e.g., *Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*; and *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Thereof Communications Protocols under Section 64.702 of the Commission's Rules and Regulations*, CC Docket No. 85-229, Report and Order, 104 FCC 2d 958, 964, para. 3 (1986) (*Computer III Phase I Order*) (finding that the decreased efficiency and innovation imposed by structural safeguards outweighed their benefits); *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21911, 21913, paras. 7, 13; *Non-Accounting Safeguards Second Order on Reconsideration*, 12 FCC Rcd at 8683, para. 55; *COMSAT Corporation Petition Pursuant to § 10(c) of the Communications Act of 1934, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier*, IB Docket No. 98-60, CC Docket No. 80-654, Order and Notice of Proposed Rulemaking, 13 FCC Rcd 14083, 14165, para. 166 (1998) (finding that "Comsat's continued dominance in the provision of switched voice, private line and occasional-use video services in non-competitive markets is not sufficient reason to continue structural separation because the costs would exceed the benefits").

²³⁹ See *supra* part III.A.1.a(i)(a)(ii) (evidence indicating that a majority of consumers purchase local and long distance services from a single provider today). See, e.g., Verizon Feb. 15, 2007 *Ex Parte* Letter at 26, nn.126, 127 (citing J.D. Power & Associates Press Release, *J.D. Power & Associates Reports: Three-Quarters of Households Now Bundle Local and Long-Distance Telephone Service with One Provider* (July 13, 2005); D. Lemelin, In-Stat, *Wireline Remains in Decline: US Wireline Service 2005* (Mar. 2006)) (stating that local and long distance services are offered to consumers in competitive bundles).

²⁴⁰ See 47 U.S.C. § 272(b); see also 47 C.F.R. § 53.203.

²⁴¹ See, e.g., Verizon NPRM Comments, Jeannie H. Diefenderfer Decl. at 1-3 (discussing the inefficiencies associated with providing broadband services through a multiple affiliate structure).

²⁴² In today's market, vendors typically do not develop equipment according to artificial demarcations between local and long distance calling or between voice and data. A prohibition against joint ownership would prevent a BOC from purchasing these unified platforms for its local and long distance services and thus prevent the BOC from deploying a new platform as quickly as its competitors. See, e.g., Legacy SBC NPRM Comments at 8. A prohibition on joint ownership of facilities could hinder a BOC from developing innovative VoIP products that integrate legacy services, such as local and long distance voice. See, e.g., Qwest NPRM Comments at 13-14 (stating that separate affiliate requirement would prevent an RBOC from purchasing a next generation switch that handles local and long distance calls).

BOC and its section 272 separate affiliate “operate independently” hinders their ability to alter business priorities quickly in response to changing market demands. The required duplicative management of the two affiliated companies creates unnecessary inefficiencies in decision making and may therefore increase the costs and delay deployment of new services.²⁴³

84. We reject arguments that we should retain the section 272 safeguards, in whole or in part, to protect against BOCs’ use of any exclusionary market power they may possess.²⁴⁴ Instead, we find that other existing safeguards, in combination with the safeguards we adopt in this Order, provide sufficient protection against these concerns and impose fewer costs and burdens.²⁴⁵ We find that commenters advocating retention of the section 272 safeguards do not adequately consider the costs of structural separation, nor do they adequately consider less costly alternatives, such as the targeted safeguards we adopt in this Order.²⁴⁶

²⁴³ Opportunity cost is the value of a foregone alternative action. Slow and ill-coordinated decision making imposes opportunity costs that include the forgone services that could have been provided in the absence of artificial dividing lines between a company’s decision makers. See Section 272(b)(1)’s “Operate Independently” Requirement for Section 272 Affiliates, WC Docket No. 03-228, CC Docket Nos. 96-149, 98-141, 01-337, Report and Order in WC Docket No. 03-228, Memorandum Opinion and Order in CC Docket Nos. 96-149, 98-141, 01-337, 19 FCC Rcd 5102, 5120, para. 30 n.100 (2004) (*OI&M Order*) (citing *The MIT Dictionary of Modern Economics* 315 (David W. Pearce ed., 4th ed. 1996)). We are also guided by the fact that the BOCs have quantified substantial costs associated with the section 272 separate affiliate requirement. See, e.g., Legacy SBC NPRM Comments at 8; Verizon NPRM Comments at 9; Legacy SBC NPRM Reply at 16.

²⁴⁴ See, e.g., Legacy AT&T NPRM Comments at 7-10 (arguing that the 272 safeguards are critical tools to promote competition); Sprint NPRM Comments at 6-16 (supporting extension of the 272 safeguards); Missouri Commission NPRM Comments at 4 (suggesting the Commission extend the section 272 separate affiliate safeguards); Pennsylvania Commission NPRM Comments at 4 (same); Texas Commission NPRM Comments at 3 (same); Wyoming Commission NPRM Comments at 2 (same); NASUCA NPRM Comments at 2, 6 (urging the Commission to extend by rule the section 272 safeguards); NJ Ratepayer NPRM Comments at 4-5 (same). Because our decision not to extend the section 272 safeguards applies throughout each BOC region, we deny legacy AT&T’s petitions to extend those safeguards in particular BOC, in-region states. See Legacy AT&T, Petition for Extension of Section 272 Obligations of Southwestern Bell Telephone Co. in the States of Arkansas and Missouri, WC Docket No. 02-112 (filed Sept. 24, 2004) (Legacy AT&T Arkansas and Missouri Petition); Legacy AT&T, Petition for Extension of Section 272 Obligations of Verizon in the State of Massachusetts, WC Docket No. 02-112 (filed Feb. 29, 2004) (Legacy AT&T Massachusetts Petition); Legacy AT&T, Petition for Extension of Section 272 Obligations of Southwestern Bell Telephone Co. in the States of Kansas and Oklahoma, WC Docket No. 02-112 (filed Dec. 8, 2003) (Legacy AT&T Kansas and Oklahoma Petition); Legacy AT&T, Petition for Extension of Section 272 Obligations of Southwestern Bell Telephone Co. in the State of Texas, WC Docket No. 02-112 (filed April 10, 2003) (Legacy AT&T Texas Petition).

²⁴⁵ See *infra* part III.A.4; see also *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5240-43, paras. 64-70; *Computer III Phase I Order*, 104 FCC 2d at 964, para. 3 (abolishing structural separation requirement upon a finding that targeted nonstructural requirements were sufficient to address discrimination and cross-subsidization concerns); *OI&M Order*, 19 FCC Rcd at 5112-15, paras. 18-22; see also, e.g., *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21983-84, 21986, 21991, paras. 162, 167-68, 179; *Non-Accounting Safeguards Second Order on Recon.*, 12 FCC Rcd at 8683, para. 55; *Competitive Carrier Fifth Report and Order*, 98 FCC 2d at 1197-98, para. 8 (determining that “[w]hile structural separation decreases opportunities for cost-shifting and anticompetitive conduct, it can also decrease efficiency and affect the interexchange carrier’s ability to compete”).

²⁴⁶ Commenters, such as state commissions, legacy AT&T, legacy MCI, Sprint, and Covad, argue variously that structural separation is necessary because local telephone competition has not taken root; that the BOCs discriminate in their special access services provisioning; that cross-subsidies are difficult to detect; and that the BOCs maintain market power. See, e.g., Legacy AT&T NPRM Comments at 10-34 (arguing *inter alia* that the BOCs maintain significant market power in all markets and engage in improper cost shifting); Covad NPRM Reply at 1-5 (claiming the section 272 safeguards provide a “bulwark” against abuses of monopoly power); Legacy MCI FNPRM (continued....)

85. We also reject arguments that we should impose an alternative set of structural safeguards on the BOCs, such as the rule 64.1903 requirements under which independent incumbent LECs provide interexchange telecommunications services on a nondominant carrier basis.²⁴⁷ Structural safeguards like those imposed in section 64.1903 of the Commission's rules include a number of the same obligations that we find lead to costs, as discussed above, that make the BOCs less effective marketplace competitors.²⁴⁸ In addition, proponents of alternative structural safeguards make no showing comparing the relative effectiveness of their proposed structural regime with either the section 272 structural regime or the non-structural safeguards regime set forth in this Order. We find, however, that these non-structural safeguards provide substantial protection against anticompetitive discrimination and improper cost shifting by the BOCs in connection with their provision of in-region, long distance services.

86. We conclude that our decisions not to extend the section 272(b) safeguards and to refrain from applying alternative structural safeguards to BOC provision of in-region, interLATA telecommunications services are consistent with section 272(f)(1) of the Act and with the D.C. Circuit's opinion in *AT&T v. FCC*.²⁴⁹ Section 272(f)(1) does not mandate that we extend the section 272 safeguards or adopt alternative safeguards as replacements, but rather simply states that the section 272 safeguards, other than those in section 272(e) "shall cease to apply" with respect to a BOC's interLATA telecommunications services three years after the BOC was authorized to provide those services unless the Commission extends that period.²⁵⁰ Moreover, the D.C. Circuit's opinion in *AT&T v. FCC* requires

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Comments at 16-20 (arguing that a separate affiliate requirement remains necessary to protect against a price squeeze from the BOCs); Sprint NPRM Comments at 7-16 (claiming the BOCs remain dominant in the local and exchange access markets and behavior warrants strong regulatory safeguards); Missouri Commission NPRM Comments at 4 (asserting that without the section 272 audit process, there is no way to detect and deter discrimination and anticompetitive behavior); Texas Commission FNPRM Comments at 4 (arguing that without separate books of account, it will be practically impossible to evaluate complaints by competitors of practices such as discrimination and cross-subsidization); Texas AG NPRM Reply at 1, 3 (arguing that BOCs possess substantial market power and that the BOCs have all been fined for violating statutory and regulatory obligations).

²⁴⁷ See, e.g., NJ Ratepayer NPRM Comments at 38 (recommending the Commission apply section 64.1903 safeguards to the BOCs); NJ Ratepayer FNPRM Comments at 4-6 (same).

²⁴⁸ For example, an independent incumbent LEC's long distance affiliate must maintain separate books of account from the independent incumbent LEC, must purchase services from the independent incumbent LEC pursuant to the incumbent LEC's tariffs, and is forbidden from jointly owning transmission or switching facilities with the independent incumbent LEC affiliate. See 47 C.F.R. § 64.1903 (providing the Commission's separate affiliate rules for independent incumbent LECs). Of course, the rule 64.1903 safeguards differ in some respects from the section 272 structural safeguards. Thus, the costs are not identical.

²⁴⁹ *AT&T Corp. v. FCC*, 369 F.3d 554, 556 (D.C. Cir. 2004) (*AT&T v. FCC*). *AT&T v. FCC* involved judicial review of the Commission's decision to allow the section 272 safeguards, other than those in section 272(e), to sunset in the state of New York without explaining why those safeguards should not be extended and without addressing whether alternative safeguards should replace the safeguards that had sunset. *Id.* at 558-60; see *Section 272 Sunsets for Verizon in New York State by Operation of Law on December 23, 2002 Pursuant to Section 272(f)(1)*, CC Docket No. 02-112, Public Notice, 17 FCC Rcd 26864 (2002) (*Verizon New York Sunset Notice*). The court held that section 272(f)(1) does not require the Commission to issue a reviewable decision prior to allowing the safeguards to sunset through operation of law and indicated that the Commission would resolve through rulemaking any open questions regarding whether safeguards are needed for the BOCs' provision of in-region, interLATA telecommunications services. *AT&T v. FCC*, 369 F.3d at 362-63.

²⁵⁰ 47 U.S.C. § 272(f)(1); see *AT&T v. FCC*, 369 F.3d at 360.

only that we resolve open questions regarding whether safeguards are needed for the BOCs' provision of in-region, interLATA telecommunications services, a task we complete in this Order.²⁵¹

b. AT&T's and Verizon's Independent Incumbent LEC Affiliates

87. As discussed above,²⁵² both AT&T and Verizon have independent incumbent LEC affiliates.²⁵³ Separate and apart from the applicability of section 272 safeguards to the BOCs, these independent incumbent LEC remain subject to the structural separation requirements in section 64.1903 of the Commission's rules.²⁵⁴ As noted above, however, AT&T's and Verizon's independent incumbent LEC affiliates voluntarily comply with the section 272 safeguards for consistency of operations within each company.²⁵⁵

88. We find good cause to waive section 64.1903 of the Commission's rules for the BOCs' independent incumbent LEC affiliates.²⁵⁶ As a practical matter, AT&T's and Verizon's independent incumbent LEC affiliates have been operating consistent with the section 272 safeguards to avoid the inefficiency of using two different affiliate structures and sets of operational methods for the BOC incumbent LECs and the independent incumbent LECs, particularly where the independent incumbent LEC operations are a relatively small portion of AT&T's and Verizon's local operations. Thus, the concerns expressed above regarding the costs of the section 272 safeguards effectively apply to both the BOCs and their independent incumbent LEC affiliates. We further find that AT&T and Verizon can more

²⁵¹ *AT&T v. FCC*, 362 F.3d at 362-63. Because our decision not to extend the section 272 safeguards applies throughout each BOC region, we deny legacy AT&T's petitions to extend those safeguards in particular BOC, in-region states. See Legacy AT&T, Petition for Extension of Section 272 Obligations of Southwestern Bell Telephone Co. in the States of Arkansas and Missouri, WC Docket No. 02-112 (filed Sept. 24, 2004); Legacy AT&T, Petition for Extension of Section 272 Obligations of Verizon in the State of Massachusetts, WC Docket No. 02-112 (filed Feb. 29, 2004); Legacy AT&T, Petition for Extension of Section 272 Obligations of Southwestern Bell Telephone Co. in the States of Kansas and Oklahoma, WC Docket No. 02-112 (filed Dec. 8, 2003); Legacy AT&T, Petition for Extension of Section 272 Obligations of Southwestern Bell Telephone Co. in the State of Texas, WC Docket No. 02-112 (filed April 10, 2003).

²⁵² See *supra* para. 9.

²⁵³ AT&T Apr. 24, 2007 *Ex Parte* Letter at 1; Verizon May 8, 2007 *Ex Parte* Letter, at 2. The franchise areas of these independent incumbent LECs, (former GTE, former SNET, and Woodbury) represent only a small percentage of the total company franchise areas and a comparable percentage of their in-region, interstate, interexchange telecommunications services.

²⁵⁴ Under section 64.1903 of our rules, the BOCs' independent incumbent LEC affiliates that provide in-region, interstate, interexchange telecommunications services or in-region, international services are required to maintain separate books of account from the independent incumbent LEC and to purchase services from the independent incumbent LEC pursuant to the incumbent LEC's tariffs. 47 C.F.R. § 64.1903(a). Section 64.1903 of the Commission's rules also forbids incumbent LECs' affiliates from jointly owning transmission or switching facilities with the independent incumbent LEC. 47 C.F.R. § 64.1903(a).

²⁵⁵ See *supra* n.32.

²⁵⁶ The Commission may waive its rules when good cause is demonstrated. 47 C.F.R. § 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*), cert. denied, 409 U.S. 1027 (1972). The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In doing so, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. See *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

effectively implement the new regulatory framework adopted in this Order if their independent incumbent LEC affiliates are subject to the same targeted safeguards as the rest of the company as a whole.²⁵⁷ These special circumstances convince us that it is consistent with the public interest to deviate from the general obligations imposed by section 64.1903 of the Commission's rules, conditioned upon the AT&T and Verizon independent incumbent LECs' complying with the targeted safeguards discussed below. We therefore conditionally waive section 64.1903 as applied to SNET, including Woodbury, and former GTE.²⁵⁸

4. Other Safeguards

89. As discussed below, we conclude that a new regulatory framework for the BOCs' in-region, long distance services is appropriate. Our new framework is based in part on the substantial legal obligations that continue to apply to the BOCs in addition to the targeted safeguards we adopt below. We find that this regulatory framework adequately and comprehensively addresses the competitive concerns described above, but imposes fewer costs and burdens than full section 272 safeguards.

a. Continuing Requirements

90. AT&T, Verizon, and Qwest remain subject to a number of legal obligations that are an important component of the regulatory framework that we find appropriate for the BOCs and their independent incumbent LEC affiliates. In particular, these carriers are still subject to: dominant carrier regulation of their interstate exchange access services, including price cap regulation of most exchange access services;²⁵⁹ the Commission's accounting and cost allocation rules and related reporting requirements;²⁶⁰ equal access obligations under longstanding Commission precedent and section 251(g) of the Act;²⁶¹ section 251 obligations;²⁶² section 271 obligations, including the obligation to continue to

²⁵⁷ See *infra* part III.A.4.b. In addition, as discussed below, other existing safeguards apply to the BOC independent incumbent LEC affiliates, such as accounting and tariffing rules. See *infra* part III.A.4.a.

²⁵⁸ We condition this waiver on AT&T's and Verizon's independent incumbent LECs' compliance with all of the safeguards we impose in this Order on the BOCs. We also condition this waiver as applied to Woodbury on its integration into SNET and on its operating as a price cap LEC for interstate ratemaking purposes once the integration process is complete. See *supra* note 32; see also AT&T Apr. 27, 2007 *Ex Parte* Letter at 1 (stating that Woodbury will be integrated into SNET, effective June 1, 2007).

²⁵⁹ BOCs are not subject to price cap regulation for: (1) the exchange access services for which they have been granted phase II pricing flexibility; and (2) certain of their services that are provided pursuant to rate of return regulation. See *Pricing Flexibility Order*, 14 FCC Rcd 14221; see also 47 U.S.C. §§ 203(b), 204(a)(3); 47 C.F.R. §§ 61.38, 61.41, 61.58; *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, CC Docket No. 96-187, Report and Order, 12 FCC Rcd 2170, 2182, para. 19, 2188, para. 31, 2191-92, para. 40, & 2202-03, para. 67 (1997); *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Memorandum Opinion and Order, 20 FCC Rcd 19415, 19424, para. 15 (2005) (*Qwest Omaha Order*), review denied in part, dismissed in part, *Qwest Corp. v. FCC*, 2007 WL 860987 (D.C. Cir. Mar. 23, 2007).

²⁶⁰ For example, BOCs are required to file on an annual basis a cost allocation manual describing how they allocate costs between regulated and nonregulated activities, and to have an independent auditor audit that cost allocation manual every two years. See 47 C.F.R. §§ 43.21(d), 64.901-64.905; see also 47 C.F.R. §§ 32.23(c), 32.5280. BOCs are subject to certain reporting requirements under ARMIS. See *Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules)*, CC Docket No. 86-182, Report and Order, 2 FCC Rcd 5770 (1987) (*ARMIS Order*), modified on recon., 3 FCC Rcd 6375 (1988) (*ARMIS Reconsideration Order*); see also 47 C.F.R. § 43.21.

²⁶¹ 47 U.S.C. § 251(g); *MTS and WATS Market Structure, Phase III*, Docket No. 78-72, Report and Order, 100 FCC 2d 860 (1985); *Investigation into the Quality of Equal Access Services*, Memorandum Opinion and Order, 60 Rad. Reg. 2d (P&F) 417, 419, 1986 WL 291752 (1986). We note that in part III.B, *infra*, we forbear from application of (continued....)

comply with the market-opening requirements that the BOCs had to meet in order to receive authority to provide in-region, interLATA services;²⁶³ and the continuing general obligation to provide service on just, reasonable, and not unreasonably discriminatory rates, terms, and conditions pursuant to sections 201 and 202 of the Act.²⁶⁴ In addition, the nondiscrimination requirement in section 272(e)(1) of the Act and the imputation requirement in section 272(e)(3) of the Act (which we discuss below) continue to apply.²⁶⁵

91. These continuing legal obligations help address the competitive concerns raised above in a variety of ways. For example, under section 202(a) of the Act, the BOCs and their independent incumbent LEC affiliates will remain obligated to provide any of their special access services that their competitors rely on as inputs for the competitors' own interLATA telecommunications service offerings on rates, terms, and conditions that are not unreasonably discriminatory.²⁶⁶ The BOCs also will remain obligated, under section 272(e)(1), to "fulfill any requests" from their interLATA telecommunications services competitors "for telephone exchange service and exchange access" within periods no longer than the periods in which they provide such telephone exchange service and exchange access to themselves or their affiliates.²⁶⁷ Moreover, the BOCs and their independent incumbent LEC affiliates will remain subject to unbundling obligations pursuant to section 251(c)(3), which, as the Commission has found previously, provides "a check on special access pricing,"²⁶⁸ and the BOCs also have unbundling obligations under section 271(c)(2)(B) as conditions of their authority to provide in-region, interLATA services.²⁶⁹

92. The BOCs and their independent incumbent LEC affiliates also remain obligated, under section 251(a), to interconnect with other carriers, and, pursuant to section 251(c), to interconnect on "rates, terms, and conditions that are just, reasonable, and nondiscriminatory," which is an important tool for facilitating intermodal competition.²⁷⁰ In addition, the BOCs' continuing equal access obligations under longstanding Commission precedent and section 251(g) of the Act should protect against

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the EA Scripting Requirement to the BOCs and find good cause to waive the EA Scripting Requirement for the BOCs' independent incumbent LEC affiliates. However, all other equal access obligations continue to apply.

²⁶² 47 U.S.C. § 251.

²⁶³ 47 U.S.C. § 271(d)(6). Section 271 does not apply to the BOCs' independent incumbent LEC affiliates.

²⁶⁴ 47 U.S.C. §§ 201, 202.

²⁶⁵ 47 U.S.C. § 272(e)(1), (e)(3); *see infra* part III.A.4.b(ii). We note that the safeguards adopted in the *Non-Accounting Safeguards* and the *Accounting Safeguards Orders* to implement these provisions also remain in effect.

²⁶⁶ 47 U.S.C. § 202(a).

²⁶⁷ 47 U.S.C. § 272(e)(1).

²⁶⁸ *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, 20 FCC Rcd 2533, 2574-75, para. 65 (2004) (*Triennial Review Remand Order*) (subsequent history omitted).

²⁶⁹ 47 U.S.C. § 271(d)(6).

²⁷⁰ *See* 47 U.S.C. § 251(c)(2); *cf. Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, Memorandum Opinion and Order, 22 FCC Rcd 3308 (WCB 2007) (clarifying that wholesale telecommunications carriers are entitled to the same rights as retail telecommunications carriers under sections 251(a) and 251(b), ensuring that new entrants have the ability to interconnect to incumbent LECs).

anticompetitive discrimination in connection with areas such as dialing parity, network control signaling, and automatic calling number identification.²⁷¹

93. In the *Section 272 Sunset Further NPRM*, the Commission sought comment on the adequacy of safeguards to prevent anticompetitive conduct by the BOCs and their independent incumbent LEC affiliates, including improper cost shifting, as a result of the direct provision of interLATA services.²⁷² As explained in the *Qwest Section 272 Sunset Forbearance Order*, based on the Commission's conclusions in the *Accounting Safeguards Order*, in-region, interLATA telecommunications services provided by the BOCs on an integrated basis currently are required to be treated as nonregulated for accounting purposes.²⁷³ Similarly, the independent incumbent LECs are currently required to treat their interLATA telecommunications services as nonregulated for accounting purposes.²⁷⁴ This treatment is consistent with the current accounting treatment by the BOCs of directly-provided, incidental and out-of-region interLATA telecommunications services.²⁷⁵

94. We find that the continued treatment of the costs of, and revenues from, the direct provision of in-region, long distance services as nonregulated for accounting purposes will provide an important protection against improper cost shifting by the BOCs' and their independent incumbent LEC affiliates. This accounting treatment also will address concerns of continued compliance with section 254(k) of the Act, and will lessen the chance that costs associated with such services are inadvertently assigned to a local exchange or exchange access category.²⁷⁶ First, the revised cost allocation manuals we require AT&T, Verizon, and Qwest to file describing how they separate regulated from nonregulated costs will be subject to public comment.²⁷⁷ This public disclosure requirement will provide an opportunity for interested parties to review and comment on whether the identified methodology could result in improper cost-shifting between the BOCs' in-region, long distance services and their telephone local exchange and

²⁷¹ 47 U.S.C. § 251(g); *MTS and WATS Market Structure, Phase III*, Docket No. 78-72, Report and Order, 100 FCC 2d 860 (1985); *Investigation into the Quality of Equal Access Services*, Memorandum Opinion and Order, 60 Rad. Reg. 2d (P&F) 417, 419, 1986 WL 291752 (1986).

²⁷² See *Section 272 Sunset and Independent Incumbent LEC Further NPRM*, 18 FCC Rcd at 10934, para. 40.

²⁷³ *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5238-39, para. 62; see also 47 C.F.R. § 32.23(a).

²⁷⁴ See *Accounting Safeguards Order*, 11 FCC Rcd 17539, 17655, para. 257 (concluding "interLATA telecommunications services should be treated like nonregulated activities for federal accounting purposes whenever these services are provided by any incumbent local exchange carrier through an affiliate").

²⁷⁵ See *Accounting Safeguards Order*, 11 FCC Rcd 17539, 17573 para. 76 (noting that treatment of out-of-region and certain types of incidental interLATA services as nonregulated for accounting purposes will achieve greater accuracy in safeguarding against cross-subsidization and will lessen the chance that costs associated with such services are inadvertently assigned to a local exchange or exchange access category).

²⁷⁶ See *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5239, para. 62, n.179 (citing *Accounting Safeguards Order*, 11 FCC Rcd at 17573, para. 76); see also *Accounting Safeguards Order*, 11 FCC Rcd at 17572-73, para. 74 (concluding that "if interLATA telecommunications services . . . that may be provided by incumbent local exchange carriers on an integrated basis, were treated as regulated for accounting purposes, our part 64 rules would not prevent any improper cost allocations that may occur between local exchange and exchange access services and these interLATA telecommunications services"); *id.* at 17572, para. 75 (stating that "we can most efficiently and comprehensively satisfy sections 254(k) and 271(h) if, solely for federal accounting purposes, we treat like nonregulated activities both out-of-region and certain types of incidental interLATA services that may be provided by incumbent local exchange carriers on an integrated basis"); *id.* at 17573, para. 76 (stating that "the Part 36 jurisdictional separations process and the Part 69 access charge process were not designed to prevent subsidization of competitive telecommunications services by subscribers to exchange and exchange access services").

²⁷⁷ 47 C.F.R. § 64.903.

exchange access services. Second, we require disclosure in ARMIS filings of the access charges the independent incumbent LEC affiliates impute to themselves through debits to their nonregulated revenues.²⁷⁸ This public disclosure requirement will provide interested parties with information they can evaluate to determine whether the BOCs and their independent incumbent LECs properly impute the costs of the access they provide their in-region, long distance service offerings. We note that the BOCs all have petitioned for and been granted pricing flexibility within their service regions.²⁷⁹ Accordingly, they, and their independent incumbent LEC affiliates, are prohibited from making any low-end adjustments pursuant to section 61.45(d)(1)(vii) of our rules.²⁸⁰ This fact reduces the incentives of the independent incumbent LEC affiliates to improperly shift costs to local exchange and exchange access services, because they are precluded from seeking rate increases for these services based on low earning levels.

b. Additional Requirements

95. In this Order, we adopt targeted safeguards that will apply to the BOCs to the extent they choose to provide in-region, interstate or international, long distance services either directly or through an affiliate that is not a section 272 separate affiliate. As a further condition of this Order, the BOCs' independent incumbent LEC affiliates also must comply with these safeguards to the extent they provide in-region, interstate, interexchange telecommunications services either directly or through an affiliate that does not comply with the requirements of either section 272 or section 64.1903 of our rules. The targeted safeguards include: (1) special access performance metrics to prevent non-price discrimination in the provision of special access services; (2) imputation requirements to help monitor BOC provisioning of these services for possible price discrimination; (3) the offering of calling plans to protect residential customers who make few interstate, long distance calls; and (4) providing subscribers monthly usage information to enable them to make cost-effective decisions concerning alternative long distance plans. We will carefully monitor the BOCs' compliance with these safeguards and will not hesitate to take appropriate remedial action if necessary. We also retain the authority to adjust these safeguards in the future as appropriate to reflect any competitive changes that might occur in the markets for in-region, long distance services.

(i) Special Access Performance Metrics

96. As part of the Commission's implementation of the section 272 structural safeguards, the BOCs have implemented special access performance metrics designed to help ensure that they refrain from non-price discrimination in their provision of special access services.²⁸¹ Once a BOC chooses to provide in-region, interLATA telecommunications services either directly or through an affiliate that is not a section 272 separate affiliate, those metrics would cease to be available. AT&T, Verizon, and Qwest also are required to implement special access metrics in accordance with their voluntary commitments in connection with the *BOC Merger Orders* and the *Qwest Section 272 Sunset Forbearance*

²⁷⁸ See *supra* part III.A.4.b(ii).

²⁷⁹ *Qwest Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD No. 02-01, Memorandum Opinion and Order, 17 FCC Rcd 7363 (WCB 2002); *Petition of Ameritech Illinois, et al., for Pricing Flexibility*, CCB/CPD Nos. 00-26, 00-23, 00-25, Memorandum Opinion and Order, 16 FCC Rcd 5889 (Com. Car. Bur. 2001); *Verizon Petitions for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD Nos. 00-24, 00-28, Memorandum Opinion and Order, 16 FCC Rcd 5876 (Com. Car. Bur. 2001); *BellSouth Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD No. 00-20, Memorandum Opinion and Order, 15 FCC Rcd 24588 (Com. Car. Bur. 2000).

²⁸⁰ 47 C.F.R. § 69.731; *Pricing Flexibility Order*, 14 FCC Rcd at 14307, para. 167.

²⁸¹ The BOCs' implementation of these metrics is reviewed as part of the biennial audits.

*Order.*²⁸² This latter group of special access metrics addresses order taking, provisioning, and maintenance and repair of the BOCs' DS0, DS1, DS3, and OCn services.

97. We find the metrics the Commission approved in the *BOC Merger Orders* and the *Qwest Section 272 Sunset Forbearance Order* are necessary to monitor whether the BOCs and their independent incumbent LEC affiliates are engaging in non-price discrimination in the provision of special access services to unaffiliated entities in light of the regulatory relief we are granting those carriers in this order.²⁸³ The information that AT&T, Qwest, and Verizon record and report to the Commission under these metrics will provide the Commission and other interested parties with reasonable tools to monitor each BOC's performance in providing these special access services to itself and its competitors.²⁸⁴ This obligation shall apply beginning the first full quarter following provision of any in-region, interLATA telecommunications service through the BOC or through an affiliate that is not a section 272 separate affiliate. In addition, each of AT&T's and Verizon's independent incumbent LEC affiliates shall implement these metrics for the first full quarter following provision of any in-region, interstate, interexchange telecommunications service through the BOC or through an affiliate that is not a section 272 separate affiliate. The BOCs and their independent incumbent LEC affiliates must continue to abide by special access performance metrics until there is an affirmative Commission determination that such metrics no longer are necessary.

98. Each BOC and each of AT&T's and Verizon's independent incumbent LEC affiliates shall implement these metrics to the extent the BOC or independent incumbent LEC provides one or more of the covered special access services to itself, to any affiliate, or to third parties. The BOCs and their independent incumbent LEC affiliates shall provide the Commission with their performance measurement results on a quarterly basis.²⁸⁵ We conclude that the metrics and the associated reporting requirements

²⁸² See *AT&T/BellSouth Order*, 22 FCC Rcd at 5807, Appendix F (Special Access); *SBC/AT&T Merger Order*, 20 FCC Rcd at 18317-18, para. 51; *Verizon/MCI Order*, 20 FCC Rcd at 18459-60, para. 51; *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5243-44, paras. 71-72.

²⁸³ 47 U.S.C. § 202(a) (requiring that common carriers refrain from "unjust or unreasonable discrimination in . . . practices . . . or services for or in connection with like communication service" and making it "unlawful for any common carrier . . . to make or give any undue or unreasonable preference or advantage to any particular person [or] class of persons, . . . or to subject any particular person [or] class of persons to any undue or unreasonable prejudice or disadvantage"); 47 U.S.C. § 272(e)(1) (requiring that a BOC "fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates"). Because we are extending the special access performance plans that the BOCs voluntarily submitted in prior proceedings, and which the Commission adopted as conditions of its orders in those proceedings, this Order does not terminate the independent obligation of the BOCs to implement those special access performance metrics pursuant to those prior orders. With regard to the BOCs, this requirement is therefore independent of their obligations to implement special access metrics as a result of their voluntary commitments in connection with the *BOC Merger Orders* and the *Qwest Section 272 Sunset Forbearance Order*.

²⁸⁴ For example, the "Firm Order Confirmation Timeliness" metric should provide data measuring whether each AT&T, Verizon, and Qwest incumbent LEC confirms orders for the covered special access services within nondiscriminatory time frames. Similarly, the "Percent Installation Services Met" and "New Installation Trouble Report Rate" metrics should measure whether each of these carriers provisions these special access services to itself and its competitors in nondiscriminatory time frames and with nondiscriminatory levels of quality. In addition, the "Failure Rate/Trouble Rate" metric should measure whether each of these carriers provides its competitors with the same level of special access quality as that provided to its own operations. Finally, the "Average Repair Interval/Mean Time to Restore" metric should measure whether each of these carriers repairs covered special access services in a nondiscriminatory manner.

²⁸⁵ Such reports shall be provided in an Excel spreadsheet format and shall be designed to demonstrate the BOCs' and, with regard to AT&T and Verizon, their independent incumbent LEC affiliates' monthly performance in (continued....)

that we impose in this Order adequately address commenters' concerns about the BOCs' and their independent incumbent LEC affiliates' incentives and ability to engage in non-price discrimination in their provisioning of special access services in order to impede competition in the market for in-region, interstate, long distance services.²⁸⁶

(ii) **Imputation**

99. We also provide guidance to AT&T, Qwest, and Verizon regarding the treatment of charges for any access services that their incumbent LEC affiliates provide their in-region, long distance operations. In providing this guidance, we address three situations: (1) the BOCs' imputation in the event they provide in-region, long distance services on an integrated basis; (2) the obligations of AT&T's and Verizon's independent incumbent LEC affiliates in the event they provide in-region, long distance services on an integrated basis; and (3) AT&T's, Qwest's, and Verizon's obligations in the event they provide in-region, long distance services through an affiliate that is neither a section 272 nor a rule 64.1903 separate affiliate.²⁸⁷ We provide this guidance pursuant to our authority under sections 201, 202(a), 220(a), and 272(e)(3) of the Act.²⁸⁸

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delivering the covered interstate special access services within each of the states in their respective regions. These data shall be reported on an aggregated basis for interstate special access services as identified in the attachment. The BOCs and their independent incumbent LEC affiliates shall provide performance measurement results (broken down on a monthly basis) for each quarter to the Commission by the 45th day after the end of the quarter.

²⁸⁶ See, e.g., Legacy MCI FNPRM Comments at 19-23; Legacy MCI FNPRM Reply at 8-12; Ad Hoc FNPRM Comments at 17-18; Ad Hoc FNPRM Reply at 5-6; see also *Triennial Review Order*, 18 FCC Rcd at 17012, para. 45 (recognizing that special access services provide competitors with wholesale inputs that they typically combine with other competitively provisioned services or facilities to build complete services for sale to retail customers), *corrected by Errata*, 18 FCC Rcd 19020 (2003), *aff'd in part, remanded in part, vacated in part*, *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*), *cert. denied sub nom. National Ass'n Regulatory Util. Comm'rs v. United States Telecom Ass'n*, 534 U.S. 925 (2004). Imposing dominant carrier regulation on AT&T, Verizon, and Qwest in their provision of in-region, long distance services will not address these commenters' concerns. Rather, the targeted safeguards adopted in this Order specifically address the BOCs' and their independent incumbent LECs' control over bottleneck access facilities. Accordingly, we find that, in comparison to dominant carrier regulation of those services, the safeguards adopted in this Order, together with other existing safeguards, provide a cost-effective means of limiting the AT&T, Verizon's, and Qwest's ability to use any market power they have in the local exchange and exchange access markets to impede competition in the enterprise market. We also decline to adopt a grooming metric requested by legacy MCI. See Legacy MCI FNPRM Comments at 12. We find that the record fails to demonstrate a current need for a grooming metric. To the extent that carriers believe a grooming metric is necessary, we encourage them to refresh the record to support its adoption. We note that both AT&T and Verizon have agreed to merger conditions that require that they "will not unreasonably discriminate in favor of [their] affiliates in establishing terms and conditions for grooming special access facilities." See *AT&T/BellSouth Order*, 22 FCC Rcd at 5807, Appendix F (Special Access); *SBC/AT&T Order*, 20 FCC Rcd at Appendix F (Special Access); *Verizon/MCI Order*, 20 FCC Rcd at Appendix G (Special Access). These merger conditions will continue to apply as described in the merger orders, regardless of whether AT&T and Verizon provide their in-region, interstate, long distance services directly, instead of through an affiliate as described in the conditions.

²⁸⁷ Imputation is an accounting and regulatory device that is used in recognizing intra-company transactions. In the context of access services, this Commission and state commissions have long recognized the potential for LECs to use their control over their local networks to impede competition in services for which local network access is a needed input. Imputation requirements address this concern by requiring the BOC to recognize for accounting and other regulatory purposes charges for local network access equal to the amounts that an unaffiliated third party would pay for comparable access. See, e.g., *Application of Access Charges to the Origination and Termination of Interstate, IntraLATA Services and Corridor Services*, Memorandum Opinion and Order, FCC 85-172, 1985 FCC Lexis 3510, para. 9 & n.22 (Apr. 12, 1985) (*Corridor Services Order*) (requiring that LECs impute access charges to (continued....))

100. In order to ensure the BOCs' continued compliance with their imputation obligations under section 272(e)(3), we direct each BOC to continue to impute to itself its highest tariffed rate for access, including access provided over joint-use facilities.²⁸⁹ We also require AT&T's and Verizon's independent incumbent LEC affiliates, as a condition of the waiver we grant them in part III.A.3.b of this Order, to comply with the same requirement with regard to their provision of access to any in-region, long distance services that they provide directly. In addition, we require the BOCs and their independent incumbent LEC affiliates to charge any non-section 272 affiliate through which they provide in-region, long distance services the same amount for access that they would have charged a section 272 separate affiliate under section 272(e)(3).²⁹⁰ Although the statute does not address these latter two situations directly, applying protections paralleling those in section 272(e)(3) to these situations will assure that the degree of protection against improper cost shifting does not vary with AT&T's, Qwest's, and Verizon's choice of corporate structure for the provision of in-region, long distance services.

101. Section 69.727(a)(iii) of our rules requires that a price cap LEC cannot provide contract tariff services to either a section 272 separate affiliate or a rule 64.1903 affiliate until after it "certifies to the Commission that it provides service pursuant to that contract tariff to an unaffiliated customer."²⁹¹ To ensure that equivalent protection is in place in the event the BOCs provide in-region, long distance services directly, we require that each AT&T, Verizon, and Qwest incumbent LEC provide such a certification to the Commission prior to providing contract tariff services to itself or to any affiliate that is neither a section 272 nor a rule 64.1903 separate affiliate for use in the provision of any in-region, long distance services.²⁹²

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themselves in calculating their interstate, intraLATA toll rates); *see also* 1998 Biennial Regulatory Review – Part 61 of the Commission's Rules and Related Tariffing Requirements, CC Docket No. 98-131, Report and Order and First Order on Reconsideration, 14 FCC Rcd 12293, 12312, para. 53 (1999) (requiring that price cap LECs offering interexchange services impute to themselves the same access charges that they impose on interexchange carriers).

²⁸⁸ 47 U.S.C. § 201(b) (requiring that all charges for interstate or foreign telecommunications services shall be "just and reasonable"); 47 U.S.C. § 202(a) (requiring that common carriers refrain from "unjust or unreasonable discrimination in . . . practices . . . or services for or in connection with like communication service" and making it "unlawful for any common carrier . . . to make or give any undue or unreasonable preference or advantage to any particular person [or] class of persons, . . . or to subject any particular person [or] class of persons to any undue or unreasonable prejudice or disadvantage"); 47 U.S.C. § 220(a) (authorizing the Commission to "prescribe the forms of any and all accounts, records, and memoranda to be kept by carrier subject to this Act"); 47 U.S.C. § 272(e)(3) (requiring each BOC that uses access to its local network for the provision of its own interLATA services to "impute to itself . . . an amount for access . . . that is no less than the amount charged to any unaffiliated interexchange carriers for such access").

²⁸⁹ *Accounting Safeguards Order*, 11 FCC Rcd at 17577, para. 87 (stating that "where a BOC charges different rates to different unaffiliated carriers for access to its telephone exchange service, the BOC must impute to its integrated operations the highest rate paid for such access by unaffiliated carriers").

²⁹⁰ Section 272(e)(3) requires that each BOC "shall charge" its section 272 separate affiliate "an amount for access . . . that is no less than the amount charged to any unaffiliated interexchange carriers for such access." 47 U.S.C. § 272(e)(3).

²⁹¹ 47 C.F.R. § 69.727(a)(iii).

²⁹² 47 C.F.R. § 69.727(a)(iii). We note that AT&T and Verizon have agreed to merger conditions that, in the case of AT&T, preclude reliance on the provision of services to Verizon or Verizon's wireline affiliates and, in the case of Verizon, preclude reliance on the provision of services to AT&T or AT&T's wireline affiliates to meet the rule 69.727(a)(iii) requirement of provision of services to an unaffiliated customer. *See AT&T/BellSouth Order*, 22 FCC Rcd at 5807, Appendix F (Special Access); *SBC/AT&T Order*, 20 FCC Rcd at 18318, para. 51; *Verizon/MCI Order*, 20 FCC Rcd at 18459-60, para. 51. These merger conditions continue to apply as described in the merger orders, (continued....)

102. We require that AT&T, Qwest, and Verizon revise the cost allocation manuals they filed pursuant to section 64.903 of our rules to include their imputation methodologies, which will be subject to public comment.²⁹³ We also require that AT&T, Qwest, and Verizon to revise their cost allocation manuals to include a description of how their provision of access services will comply with the affiliate transaction rules, to the extent they will offer in-region, interstate, long distance service through an affiliate that is not a section 272 separate affiliate or a rule 64.1903 affiliate. Consistent with the Commission's findings in the *Accounting Safeguards Order*,²⁹⁴ we require that the BOCs and their independent incumbent LEC affiliates continue to treat in-region, long distance services as nonregulated for accounting purposes. These carriers also must continue to apply our affiliate transaction rules to any transactions they have with affiliates that provide long distance services.

103. AT&T, Qwest, and Verizon indicate that a significant reason underlying their desire to provide in-region, long distance services outside of the section 272 and rule 64.1903 separate affiliate structures is to realize the efficiencies of an integrated network over time.²⁹⁵ This integration will change both how each carrier's in-region, long distance network interconnects with its local network and the degree to which some facilities are jointly used to provide both local and interLATA services. The degree of integration does not alter AT&T's, Qwest's, and Verizon's obligations under section 272(e)(3) and this Order.²⁹⁶ We direct AT&T, Qwest, and Verizon to modify their cost allocation manuals as necessary, however, to ensure that their imputation and access charge methodologies remain consistent with section 272(e)(3) and this Order as each of these carriers changes the degree to which it integrates its local telephone and long distance operations.²⁹⁷

104. Finally, under our rules, amounts imputed to each BOC's or BOC independent incumbent LEC affiliate's in-region, long distance operations pursuant to section 272(e)(3) and this Order must be debited to account 32.5280,²⁹⁸ which includes nonregulated operating revenue.²⁹⁹ To facilitate

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regardless of whether the in-region, interstate, long distance services are provided directly or through an affiliate instead of a section 272 affiliate as described in the conditions. We note further that both AT&T and Verizon have agreed to merger conditions that require that they "not provide special access offerings to [their] wireline affiliates that are not available to other similarly situated special access customers on the same terms and conditions." See *id*. These merger conditions continue to apply as described in the merger orders, regardless of whether the in-region, interstate, long distance services are offered directly instead of through a wireline affiliate as described in the conditions.

²⁹³ 47 C.F.R. § 64.903 (cost allocation manual requirements).

²⁹⁴ See *Accounting Safeguards Order*, 11 FCC Rcd at 17620, para. 176 (directing that the BOCs treat services provided by their section 272 interLATA affiliates, such as affiliates providing in-region services, as nonregulated activities for accounting purposes). The *Accounting Safeguards Order* does not limit the applicability of nonregulated accounting treatment for services provided by section 272 separate affiliates to specific services.

²⁹⁵ See, e.g., Legacy SBC NPRM Comments at 5-8 (discussing the substantial costs imposed on BOCs by the section 272 separate affiliate requirements); Qwest NPRM Comments at 13-15 (discussing inefficiency costs associated with structural separation requirements); Verizon NPRM Comments at 2, 9-11 (discussing the burdens and costs of duplicative efforts resulting from the section 272 separation requirements).

²⁹⁶ 47 U.S.C. § 272(e)(3).

²⁹⁷ 47 C.F.R. § 64.903(b) (accuracy of cost allocation manuals).

²⁹⁸ 47 C.F.R. § 32.5280 (nonregulated operating revenue).

²⁹⁹ 47 C.F.R. § 32.5280; *Accounting Safeguards Order*, 11 FCC Rcd at 17576-77, para. 86; see also 47 C.F.R. § 64.901(b)(1) (specifying that tariffed services, such as exchange access services, provided to a nonregulated operation must be charged to nonregulated activities at the tariffed rates and credited to the regulated revenue account for that service).